IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

Writ Petition No.20032 of 1996

Dated: 26-06-2007

Between:

Qudrat Ali Khan, s/o Nawab Zahoor Nawaz Jung.

... Petitioner

and

1. The State of Andhra Pradesh,
   rep. by the Secretary, Urban Land Ceilings,
   Hyderabad and 2 others.

... Respondents

ORDER:

Petitioner states that he is the absolute owner of the land in an extent of 1,464.70 square metres with building, adjacent to the land of Qudrat Manzil bearing Asst.No.3-5-143/A/54. He and his wife are beneficiaries under two trusts namely Rafath Manzil trust and Qudrat Manzil and thus they are in occupation of the lands with buildings bearing House No.3-5-121 in 1842.64 square metres and House No.3-5-121/E/1 in 3172.00 square metres respectively. When the Urban

Land (Ceiling Regulation) Act, 1976 (for short, 'the Act') came into force, as he and his wife were minors, the Joint Secretary of the said two trusts filed statement in Form – I, under Section 6(1) of the Act as early as in 1976 before third respondent – Special Officer & Competent Authority, Urban Land Ceilings, Hyderabad, and the same was numbered as C.C.Nos.4921 and 4922 of 1976. While the enquiry into the said statement was pending, petitioner demolished the structures in house No.3-5-121/E/1 and also the house bearing No.3-5-143/A/54, at different times and thus made the entire extent of 3,172 square metres and 1,464.70 square meters, vacant. Thereafter he applied to the Commissioner of Police, Hyderabad,

on 27-12-1977 for permission to construct a theatre and accordingly,

he obtained required permissions from all the competent authorities and thus he constructed a theatre. However, on the basis of the declaration filed in 1976, third respondent passed an order on 02-06-1987 holding that petitioner is having surplus land and thus a draft statement was prepared.

He further states that though he is entitled to file objections stating that he is not a surplus landholder, he has not chosen to do so and thus allowed the competent authority to pass final order on 31-12-1987 as provided for under Section 8(4) of the Act, wherein it is stated that he is having an excess 3,113.13 square metres in premises No.3-5-121/E/1 covered by Shalimar theatre. The said order was questioned before Second respondent - Commissioner of Land Reforms & Urban Land Ceilings by filing an appeal as provided under Section 33 of the Act. But, however, the appellate authority confirmed the said order and hence this writ petition.

2. Heard learned counsel for the parties.

3. The main contention of learned counsel for petitioner is that originally a statement under Section 6(1) of the Act was filed when there were structures and as the Act provides for a vacancy in the appurtenant lands, which have structures at the time when the said statement under Section 6(1) was filed there was absolutely no surplus land. But for the fact that the said structures were subsequently demolished the land would not have become or shown as vacant land. But however, the competent authority, according to learned counsel for petitioner, had not taken the structures existing as on 09-06-1976 in determining as to whether there was surplus land or not, but taking the subsequent picture that the land in question is taken by virtue of the demolitions made by petitioner, had determined that there is excess. According to him when once a demolition had taken place and the building is destroyed or demolished, those facts also shall be taken into consideration in determining the surplus, but the competent authority as well as the appellate authority have not taken those factors into consideration and thus determined that petitioner is a surplus land holder and directed him to surrender an extent of 3.113.13 square metres.

4. The learned Government Pleader has drawn my attention to the provisions particularly Sections 8 and 22 of the Act and contended that petitioner at no point of time has brought it to the notice of the authorities saying that the original structures were demolished and thus the lands have become vacant wherein a theatre was constructed.

5. In the light of the said submissions it is necessary to refer Sections 8 and 22 of the Act. Section 8 of the Act deals with the preparation of draft statement as regards to vacant land held in excess

of ceiling limit and according to sub-section (1) of Section 8 of the Act when once a statement is filed under Section 6(1) of the Act, the competent authority may hold an enquiry and shall prepare a draft statement in respect of the person who filed the statement under Section 6(1) of the Act. In the instant case, a statement on behalf of petitioner was filed as early as in 1976 stating that petitioner and two trusts own three extents of land

i.e. 1,842.64 square metres, 3,172 square metres and 1,464.70 square metres. As the definition of 'vacant land' under Section 2(q) of the Act excludes the land occupied by any building, which has been constructed before, or is being constructed on, the appointed day with the approval of the appropriate authority and the land appurtenant to such building.

From the above definition it is clear that even if there is a vacant land in an area where a building is constructed, it cannot be considered as a vacant land for the purpose of the Act. Though there is a vacant land in the three premises mentioned in the statement filed under Section 6(1) of the Act, as the same is appurtenant to the buildings that were constructed, that cannot be treated as a vacant land for the purpose of determining as to whether there was any surplus land or not. If the authorities proceed on the basis of the statement filed under Section 6(1) of the Act definitely it would not have come to the conclusion that there is surplus land because of the existing structures as on 1976. However, subsequently certain things have taken place i.e. demolition of structures in two of the said buildings i.e. house No.3-5-121/E/1 and 3-5-143/A/54 and thus the entire extent of 3,172 square metres and 1,464.70 square metres covered under those two buildings, has become vacant and thereafter a theatre was built and the same was taken into consideration by the competent authority,

as though the said land was vacant and thus came to the conclusion that petitioner is having surplus land and thus passed an order directing him to surrender certain extent. These facts about the demolition of structures and making the entire land vacant and construction of theatre etc., for the first time was brought to the notice of this Court alone and petitioner had not brought these things to the competent authority either by filing objections as provided for under Section 8(3) of the Act or as provided for under Section 22(1) of the Act. No doubt, he can demolish the structures but had he brought the said changes to the notice of the competent authority, probably, the competent authority would not have passed an order holding that there is surplus land.

6. Though, it is the contention of learned counsel for petitioner that it is within the knowledge of the competent authority about the subsequent development, but I am of the view that petitioner should have brought these facts to the notice of the competent authority. Despite the fact that his information about the subsequent developments i.e. the demolition of structures etc., the authority had passed an order holding that petitioner is having surplus land, definitely, it can be said that the competent authority is wrong in holding that there is surplus land. When petitioner himself is at fault he cannot say that the authority is at fault.

7. However, having regard to the totality of the facts and circumstances of the case on hand, this Court is of the view that third respondent – Special Officer had not taken these factors into consideration. Of course, petitioner might have been at fault, but for the laches on his part in not bringing these factors to the authorities either by filing objection under Section 8(3) of the Act or under Section

22 of the Act, he shall not suffer. Accordingly, this court is of the view that the orders impugned in this writ petition i.e. the final order passed under Section 8(4) of the Act by the competent authority as on 02-06-1987 as confirmed by the orders passed by the appellate authority on 18-10-1993 are hereby set aside and petitioner is hereby directed to bring these facts to the notice of the competent authority, enabling it to pass appropriate orders.

8. Accordingly, the writ petition is allowed. No costs.

JUSTICE GOPALAKRISHNA TAMADA

Dt.26-06-2007
GLV